

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

FLOYD SCOTT,

Plaintiff,

v.

ADVENTIST HEALTH BAKERSFIELD,  
et al.,

Defendants.

Case No. 1:22-cv-01334-ADA-CDB

SCREENING ORDER DISMISSING  
WITHOUT PREJUDICE PLAINTIFF'S  
COMPLAINT WITH LEAVE TO FILE A  
FIRST AMENDED COMPLAINT

(ECF No. 1)

Plaintiff Floyd Scott ("Plaintiff") is a state prisoner proceeding *pro se* in this civil rights action brought pursuant to 42 U.S.C. § 1983. (ECF No. 1 at 1). Plaintiff lists the following parties as defendants (1) Adventist Health Bakersfield, (2) John Doe, (3) Kathleen L. Thomas, (4) David Reed Condie, (5) Gallagher Bassett, (6) Christina Dietrich (7) Gwen Arroyo, SCLA, (8) Compass Group, (9) National Union Insurance Company of Pittsburgh [*sic*], (10) Timothy Miller, R.N. ("Defendants"). *Id.* at 1-2.

**Preliminary Screening**

Plaintiff, who is proceeding without counsel in this action, was granted status to proceed *in forma pauperis* ("IFP") in this action. (ECF Nos. 2-3). *See* 28 U.S.C. § 1915(a) (authorizing the commencement of an action "without prepayment of fees or security" by a person who is unable to pay such fees). However, the determination that a plaintiff may proceed without

1 payment of fees does not complete the Court's inquiry. Pursuant to 28 U.S.C. § 1915(e)(2)(B),  
 2 federal courts must screen IFP complaints and dismiss any case that is "frivolous or malicious,"  
 3 "fails to state a claim on which relief may be granted" or seeks monetary relief against an immune  
 4 defendant. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (*en banc*) ("[S]ection  
 5 1915(e) not only permits but requires a district court to dismiss an [IFP] complaint that fails to  
 6 state a claim.").

### **Procedural and Factual Background**

7 On January 15, 2021, Plaintiff alleges he was taken to Adventist Health Bakersfield.  
 8 (ECF No. 1 at 5). Plaintiff states he was "wearing waist chains with hand cuffs [*sic*] and leg  
 9 chains with ankle cuffs while at Adventist Health Bakersfield". *Id.* Plaintiff claims he was  
 10 placed in a hospital wheelchair and escorted to a pre-operative examination room by an  
 11 unspecified wheelchair attendant. *Id.* Plaintiff asserts "once at the examination room I was told  
 12 to get up before I could fully move away from the wheelchair my leg chains got caught on the  
 13 wheel chairs foot rest [*sic*] causing me to fall face forward with no way to stop the fall." *Id.*  
 14 Plaintiff alleges the wheelchair attendant did not assist him out of the wheelchair and as a result  
 15 of his fall he injured his left knee. *Id.*

16 Plaintiff claims following the fall, the wheelchair attendant and a corrections staff member  
 17 took him to an examination room bed. *Id.* Plaintiff asserts he was seen by Registered Nurse  
 18 Kathleen L. Thomas and Doctor David Reed Condie. *Id.* at 5-6. Plaintiff claims he informed  
 19 Nurse Thomas and Doctor Condie that his left knee was in pain. *Id.* Plaintiff alleges he was  
 20 provided a concussion check by Doctor Condie but received no pain medication, was not given an  
 21 X-Ray or "an M.I.R. [*sic*]" and "did not even get an ace bandage or anything." *Id.* at 5.  
 22 Sometime after, Plaintiff claims "X-Rays and an M.R.I. done at the California State Prison-Los  
 23 Angeles County shows an injury to my left knee that was not there prior to January 15, 2021." *Id.*  
 24 at 6. Plaintiff states he now has to wear a knee brace on his left knee. *Id.* at 9.

25 Plaintiff claims he attempted to obtain the wheelchair attendant's name but Adventist  
 26 Health Bakersfield, its office of risk management, and their parent company The Compass Group  
 27 failed to respond to his "numerous requests." *Id.* at 7. Plaintiff alleges he made numerous

1 attempts to file an insurance claim for his left knee but the insurance agency Gallagher Bassett its  
2 employees Gwen Arroyo, SCLA, Christian Dietrich, and Timothy Miller, R.N., a person from the  
3 hospital's office of risk management failed to respond to his requests. *Id.*

4 **Plaintiff's Claims**

5 The Court accepts Plaintiff's allegations in the complaint as true only for the purpose of  
6 the *sua sponte* screening requirement under 28 U.S.C. § 1915. Plaintiff argues that Defendants'  
7 conduct violated his "Eighth Amendment Rights to Adequate Medical Care; Deliberate  
8 Indifference; Denying Medical Treatment." (ECF No. 1 at 5). Moreover, Plaintiff claims  
9 Defendants violated his "Due Process Rights." *Id.* at 7.

10 **Standard of Review**

11 A federal court must screen IFP complaints and dismiss any case that fails to state a claim  
12 on which relief may be granted. 28 U.S.C. § 1915(e)(2)(B); *see Wilhelm v. Rotman*, 680 F.3d  
13 1113, 1121 (9th Cir. 2012) ("Failure to state a claim under § 1915 incorporates the familiar  
14 standard applied in the context of failure to state a claim under Federal Rule of Civil Procedure  
15 12(b)(6)." (citations omitted)). When considering whether a complaint states a claim upon  
16 which relief can be granted, the court must accept the well-pled factual allegation as true and  
17 construe the complaint in the light most favorable to the plaintiff. *Erickson v. Pardus*, 551 U.S.  
18 89, 94 (2007). To avoid dismissal for failure to state a claim, a complaint must contain more than  
19 "naked assertions," "labels and conclusions," or "a formulaic recitation of the elements of a cause  
20 of action." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-57 (2007); *Ashcroft v. Iqbal*, 556  
21 U.S. 662, 678 (2009). Relief cannot be granted for a claim that lacks facial plausibility.  
22 *Twombly*, 550 U.S. at 570. Instead, "a claim has facial plausibility when the plaintiff pleads  
23 factual content that allows the court to draw the reasonable inference that the defendant is liable  
24 for the misconduct alleged." *Iqbal*, 556 U.S. at 678.

25 A court must dismiss a case if, at any time, it determines that it lacks subject matter  
26 jurisdiction. Fed. R. Civ. P. 12(h)(3). A federal district court generally has jurisdiction over a  
27 civil action when (1) a federal question is presented in an action "arising under the Constitution,  
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1 laws, or treaties of the United States" or (2) there is complete diversity of citizenship between the  
2 parties and the amount in controversy exceeds \$75,000. See 28 U.S.C. §§ 1331, 1332(a).

3 Pleadings by self-represented litigants are to be liberally construed. *See Haines v. Kerner*,  
4 404 U.S. 519, 520-21 (1972). However, "the liberal pleading standard . . . applies only to a  
5 plaintiff's factual allegations," not his legal theories. *Neitzke v. Williams*, 490 U.S. 319, 330 n .9  
6 (1989). Furthermore, "a liberal interpretation of a civil rights complaint may not supply essential  
7 elements of the claim that were not initially pled," *Bruno v. Nat'l Credit Union Admin.*, 122 F.3d  
8 1251, 1257 (9th Cir. 1997) (internal quotation marks & citation omitted), and courts "are not  
9 required to indulge unwarranted inferences." *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681  
10 (9th Cir. 2009) (internal quotation marks & citation omitted).

11 Unless it is clear no amendment can cure the defects of a complaint, a self-represented  
12 plaintiff proceeding IFP ordinarily is entitled to notice and an opportunity to amend before  
13 dismissal. *Cato v. United States*, 70 F.3d 1103, 1106 (9<sup>th</sup> Cir. 1995). Leave to amend need not be  
14 granted when further amendment would be futile. *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336,  
15 339 (9th Cir. 1996).

16 **Discussion**

17 Plaintiff's complaint fails to state a claim on which relief may be granted. Plaintiff asserts  
18 Defendants violated his Eighth Amendment rights to adequate medical care through deliberate  
19 indifference and by denying him medical treatment. (ECF No. 1 at 5). In addition, Plaintiff  
20 claims Defendants violated his due process rights by failing to act with goodwill. *Id.* at 7.  
21 Ostensibly, Plaintiff has brought this action under 42 U.S.C. § 1983. The Civil Rights Act  
22 provides:

23 Every person who, under color of any statute, ordinance, regulation, custom, or usage, of  
24 any State or Territory or the District of Columbia, subjects, or causes to be subjected, any  
25 citizen of the United States or other person within the jurisdiction thereof to the  
26 deprivation of any rights, privileges or immunities secured by the Constitution and laws,  
27 shall be liable to the party injured in an action at law, suit in equity, or other proper  
28 proceeding for redress...

1 42 U.S.C. § 1983. “[Section] 1983 is not itself a source of substantive rights, but merely provides  
 2 a method for vindicating federal rights elsewhere conferred.” *Graham v. Connor*, 490 U.S. 386,  
 3 393-94 (1989) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979)).

4 To state a claim under § 1983, a plaintiff must show that he was deprived of a right  
 5 secured by the Constitution and law of the United States and that deprivation occurred under the  
 6 color of state law. *Broam v. Bogan*, 320 F.3d 1023, 1028 (9th Cir. 2003) (citing *Flagg Bros., Inc.*  
 7 *v. Brooks*, 436 U.S. 149, 155 (1978)); *Marsh v. County of San Diego*, 689 F.3d 1148, 1158 (9th  
 8 Cir. 2012). A person deprives another of a constitutional right, “within the meaning of § 1983, ‘if  
 9 he does an affirmative act, participates in another’s affirmative act, or omits to perform an act  
 10 which he is legally required to do that causes the deprivation of which complaint is made.’”  
 11 *Preschooler II v. Clark Cnty. Sch. Bd. of Trs.*, 479 F.3d 1175, 1183 (9th Cir. 2007) (quoting  
 12 *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978)).

13 Action under the color of state law normally consist of actions taken by a public agency or  
 14 officer. *Taylor v. First Wyoming, Bank, N.A.*, 707 F.2d 388, 389 (9th Cir. 1983). Private parties  
 15 are not generally acting under the color of state law for the purpose of § 1983. *Price v. Hawaii*,  
 16 939 F.2d 702, 707-08 (9th Cir. 1991); see *Sutton v. Providence St. Joseph Medical Center*, 192  
 17 F.3d 826, 835 (9th Cir. 1999) (a party charged with constitutional deprivation must be a  
 18 governmental actor because “§ 1983 excludes from its reach merely private conduct, no matter  
 19 how discriminatory or wrong”). However, “state action may be found if, though only if, there is  
 20 such a close nexus between the State and the challenged action that seemingly private behavior  
 21 may be fairly treated as that of the State itself.” *Lee v. Katz*, 276 F.3d 550, 554 (9th Cir. 2002)  
 22 (internal quotation marks and alterations omitted).

23 The Ninth Circuit has recognized at least four tests that facilitate the identification of state  
 24 action, namely, “(1) public function; (2) joint action; (3) governmental compulsion or coercion;  
 25 and (4) governmental nexus.” *Rawson v. Recovery Innovations*, 975 F.3d 742, 747 (9th Cir.  
 26 2020) (quoting *Kirtley v. Rainey*, 326 F.3d 1088, 1092 (9th Cir. 2003)). Satisfaction of any of  
 27 these tests is enough to find state action, provided no “countervailing” factors exist. *Id.*  
 28 Regardless of the test, “[a]t bottom, the inquiry is always whether the defendant has exercised

1 power possessed by virtue of state law and made possible only because the wrongdoer is clothed  
2 with the authority of state law.” *Id.* at 748 (internal quotations and citations omitted). The  
3 plaintiff bears the burden of establishing that defendant is a state actor, and there is a presumption  
4 that private individuals and entities do not act under the “color of state law” within the meaning  
5 of § 1983. *Florer v. Congregation Pidyon Shevuyim, N.A.*, 639 F.3d 916, 922 (9th Cir. 2011).

6 Plaintiff has not alleged that any of these Defendants are state entities, state employees,  
7 contracted by the state, or were otherwise acting under color of state law. Generally, physicians  
8 who contract with prisons to provide healthcare to inmates are state actors. *West v. Atkins*, 487  
9 U.S. 42, 51-54 (1988). However, private doctors, nurses, and hospitals who have not assumed the  
10 state’s obligation to provide medical care to inmates are not state actors simply because they  
11 provide one-off medical treatment to an inmate. *Id.; Briley v. California*, 564 F.2d 849, 855-856  
12 (9th Cir. 1977). Plaintiff has failed to allege Defendants are cloaked in the authority of the state  
13 or have assumed the state’s obligation to provide sufficient care to prisoners to consider them  
14 state actors. *See generally* (ECF No. 1). Therefore, the Court must dismiss Plaintiff’s Complaint  
15 for failing to demonstrate Defendants alleged constitutional deprivations are attributable to the  
16 state.

17 Plaintiff will be granted an opportunity to file a first amended complaint curing the  
18 aforementioned deficiencies. Plaintiff is advised that an amended complaint supersedes the  
19 original complaint. *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 927 (9th Cir. 2012). Plaintiff’s first  
20 amended complaint must be “complete in itself without reference to the prior or superseded  
21 pleading.” Local Rule 220.

22 Accordingly, it is hereby ORDERED:

- 23 1. Plaintiff’s Complaint (ECF No. 1) shall be DISMISSED WITHOUT PREJUDICE for  
24 failure to state a claim;
- 25 2. Within thirty days from the date of service of this order, Plaintiff shall file a first  
26 amended complaint, curing if able, the deficiencies identified by the Court in this  
27 order; and

1           3. If Plaintiff fails to file a first amended complaint in compliance with this order, the  
2           Court will recommend to the district judge that this action be dismissed, with  
3           prejudice, for failure to obey a court order, failure to prosecute, and for failure to state  
4           a claim.

5 IT IS SO ORDERED.

6 Dated: November 28, 2022

  
7           UNITED STATES MAGISTRATE JUDGE

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